1834; July 18, 1984, Pub. L. 98–369, div. A, title I, §131(f)(2), 98 Stat. 665; Aug. 20, 1996, Pub. L. 104–188, title I, §1902(a), 110 Stat. 1909, provided for payment and collection of the tax imposed under section 1491 of this title.

CHAPTER 6—CONSOLIDATED RETURNS

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Subchapter A—Returns and Payment of Tax

Sec.
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§ 1501. Privilege to file consolidated returns

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

§ 1502. Regulations

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 94–455, title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §844(a), Oct. 22, 2004, 118 Stat. 1600.)

AMENDMENTS

2004—Pub. L. 108–357 inserted at end ''In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.''

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §844(c), Oct. 22, 2004, 118 Stat. 1600, provided that: ''This section [amending this section], and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [Oct. 22, 2004].''

DUAL RESIDENT COMPANIES

Pub. L. 100–647, title VI, §6126, Nov. 10, 1988, 102 Stat. 3713, provided that:

''(a) GENERAL RULE.—In the case of a transaction which—

''(1) involves the transfer after the date of the enactment of this Act [Nov. 10, 1988] by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

''(2) qualifies, pursuant to Revenue Ruling 87–27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502–19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

''(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

''(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

''(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

''(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

''(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

''(i) be reduced by the net amount of any such income, and

''(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

''(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

''(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

''(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

''(A) the fair market value of the property transferred, over

''(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

[1] Section numbers editorially supplied.

''(c) DEFINITIONS.—For purposes of this section—

''(1) COMMON PARENT.—The term 'common parent' means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

''(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term 'qualified excess loss account' means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

''(A) to taxable years beginning before January 1, 1988, and

''(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

''(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

''(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

''(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

''(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

''(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).''

SPECIAL RULE FOR DISPOSITION OF STOCK OF SUBSIDIARY

Pub. L. 99–514, title VI, §647, Oct. 22, 1986, 100 Stat. 2294, provided that: ''If for a taxable year of an affiliated group filing a consolidated return ending on or before December 31, 1987, there is a disposition of stock of a subsidiary (within the meaning of Treasury Regulation section 1.1502–19), the amount required to be included in income with respect to such disposition under Treasury Regulation section 1.1502–19(a) shall, notwithstanding such section, be included in income ratably over the 15-year period beginning with the taxable year in which the disposition occurs. The preceding sentence shall apply only if such subsidiary was incorporated on December 24, 1969, and is a participant in a mineral joint venture with a corporation organized under the laws of the foreign country in which the joint venture mineral project is located.''

§ 1503. Computation and payment of tax

(a) [General rule] [1]

In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return.

[(b) Repealed. Pub. L. 94–455, title X, § 1052(c)(5), Oct. 4, 1976, 90 Stat. 1648]

(c) Special rule for application of certain losses against income of insurance companies taxed under section 801

(1) In general

If an election under section 1504(c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section 801 results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carry-back periods against the taxable income of such members not taxed under section 801 shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section 801, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years.

(2) Losses of recent nonlife affiliates

Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 801 shall not be taken into account in determining the taxable income of a member taxed under section 801 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2)).

(d) Dual consolidated loss

(1) In general

The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year.

(2) Dual consolidated loss

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the term ''dual consolidated loss'' means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

(B) Special rule where loss not used under foreign law

To the extent provided in regulations, the term ''dual consolidated loss'' shall not in-

[1] Subsec. (a) heading editorially supplied.

clude any loss which, under the foreign income tax law, does not offset the income of any foreign corporation.

(3) Treatment of losses of separate business units

To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

(4) Income on assets acquired after the loss

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained.

(e) Special rule for determining adjustments to basis

(1) In general

Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)—

(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

(2) Definitions

For purposes of this subsection—

(A) Intragroup stock

The term ''intragroup stock'' means any stock which—

(i) is in a corporation which is or was a member of an affiliated group of corporations, and

(ii) is held by another corporation which is or was a member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

(B) Consolidated year

The term ''consolidated year'' means any taxable year for which the affiliated group makes a consolidated return.

(C) Application of section 312(n)(7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(3) Adjustments

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)—

(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

(B) in the case of any property, for any basis adjustment under section 50(c).

(4) Elimination of election to reduce basis of indebtedness

Nothing in the regulations prescribed under section 1502 shall permit any reduction in the amount otherwise included in gross income by reason of an excess loss account if such reduction is on account of a reduction in the basis of indebtedness.

(f) Limitation on use of group losses to offset income of subsidiary paying preferred dividends

(1) In general

In the case of any subsidiary distributing during any taxable year dividends on any applicable preferred stock—

(A) no group loss item shall be allowed to reduce the disqualified separately computed income of such subsidiary for such taxable year, and

(B) no group credit item shall be allowed against the tax imposed by this chapter on such disqualified separately computed income.

(2) Group items

For purposes of this subsection—

(A) Group loss item

The term ''group loss item'' means any of the following items of any other member of the affiliated group which includes the subsidiary:

(i) Any net operating loss and any net operating loss carryover or carryback under section 172.

(ii) Any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

(B) Group credit item

The term ''group credit item'' means any credit allowable under part IV of subchapter A of chapter 1 (other than section 34) to any other member of the affiliated group which includes the subsidiary and any carryover or carryback of any such credit.

(3) Other definitions

For purposes of this subsection—

(A) Disqualified separately computed income

The term ''disqualified separately computed income'' means the portion of the separately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on applicable preferred stock.

(B) Separately computed taxable income

The term ''separately computed taxable income'' means the separate taxable income

of the subsidiary for the taxable year determined—

(i) by taking into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses,

(ii) without regard to any net operating loss or capital loss carryover or carryback, and

(iii) with such adjustments as the Secretary may prescribe.

(C) Subsidiary

The term ''subsidiary'' means any corporation which is a member of an affiliated group filing a consolidated return other than the common parent.

(D) Applicable preferred stock

The term ''applicable preferred stock'' means stock described in section 1504(a)(4) in the subsidiary which is—

(i) issued after November 17, 1989, and

(ii) held by a person other than a member of the same affiliated group as the subsidiary.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection, including regulations—

(A) to prevent the avoidance of this subsection through the transfer of built-in losses to the subsidiary,

(B) to provide rules for cases in which the subsidiary owns (directly or indirectly) stock in another member of the affiliated group, and

(C) to provide for the application of this subsection where dividends are not paid currently, where the redemption and liquidation rights of the applicable preferred stock exceed the issue price for such stock, or where the stock is otherwise structured to avoid the purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 86–780, §2, Sept. 14, 1960, 74 Stat. 1011; Pub. L. 88–272, title II, §234(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 113; Pub. L. 94–455, title X, §§1031(b)(4), 1052(c)(5), title XV, §1507(b)(3), title XIX, §1901(b)(1)(Y), Oct. 4, 1976, 90 Stat. 1623, 1648, 1740, 1792; Pub. L. 98–369, div. A, title II, §211(b)(19), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title XII, §1249(a), Oct. 22, 1986, 100 Stat. 2584; Pub. L. 100–203, title X, §10222(a)(1), Dec. 22, 1987, 101 Stat. 1330–410; Pub. L. 100–647, title I, §1012(u), title II, §2004(j)(1)(A), (2), (3)(A), Nov. 10, 1988, 102 Stat. 3528, 3604, 3605; Pub. L. 101–239, title VII, §§7201(a), 7207(a), 7821(c), Dec. 19, 1989, 103 Stat. 2328, 2337, 2424; Pub. L. 101–508, title XI, §§11802(f)(4), 11813(b)(25), Nov. 5, 1990, 104 Stat. 1388–530, 1388–555.)

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101–508, §11802(f)(4), struck out at end ''For taxable years ending with or within calendar year 1981, '25 percent' shall be substituted for '35 percent' each place it appears in the first sentence of this subsection. For taxable years ending with or within calendar year 1982, '30 percent' shall be substituted for '35 percent' each place it appears in that sentence.''

Subsec. (e)(3)(B). Pub. L. 101–508, §11813(b)(25), substituted ''section 50(c)'' for ''section 48(q)''.

1989—Subsec. (e)(2)(A)(ii). Pub. L. 101–239, §7821(c), substituted ''another corporation which is or was a member'' for ''another member''.

Subsec. (e)(4). Pub. L. 101–239, §7207(a), added par. (4).

Subsec. (f). Pub. L. 101–239, §7201(a), added subsec. (f).

1988—Subsec. (d)(3), (4). Pub. L. 100–647, §1012(u), added pars. (3) and (4).

Subsec. (e)(1). Pub. L. 100–647, §2004(j)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—''.

Subsec. (e)(2)(C). Pub. L. 100–647, §2004(j)(3)(A), added subpar. (C).

Subsec. (e)(3). Pub. L. 100–647, §2004(j)(2), added par. (3).

1987—Subsec. (e). Pub. L. 100–203 added subsec. (e).

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1984—Subsec. (c). Pub. L. 98–369, §211(b)(19)(A), (C), substituted ''section 801'' for ''section 802'' in heading, and wherever appearing in text.

Subsec. (c)(1). Pub. L. 98–369, §211(b)(19)(B), struck out provision that for purposes of this subsection, in determining the taxable income of each insurance company subject to tax under section 802, section 802(b)(3) would not be taken into account.

1976—Subsec. (a). Pub. L. 94–455, §1052(c)(5), struck out subsec. (a) designation.

Subsec. (b). Pub. L. 94–455, §1052(c)(5), struck out subsec. (b) which provided for a special rule for application of foreign tax credit when overall limitation applies.

Subsec. (b)(1). Pub. L. 94–455, §1031(b)(4), struck out ''and if for the taxable year an election under section 904(b)(1) (relating to election of overall limitation on foreign tax credit) is in effect'' after ''section 921)''.

Subsec. (b)(3)(C). Pub. L. 94–455, §1901(b)(1)(Y), struck out subpar. (C) which defined ''consolidated taxable income''.

Subsec. (c). Pub. L. 94–455, §1507(b)(3), added subsec. (c).

1964—Subsec. (a). Pub. L. 88–272, §234(a), struck out provisions which increased the tax imposed under section 11(c), or section 831, by 2% of the consolidated taxable income of the affiliated group of includible corporations, and defined ''consolidated taxable income''.

Subsec. (b). Pub. L. 88–272, §234(b)(1), (2), redesignated subsec. (d) as (b), and substituted references to section 7701 for references to former subsection (c) of this section, in subpar. (A), and definition of ''consolidated taxable income'' for provisions relating to the computation of tax, for purposes of par. (1)(A), on the portion of consolidated taxable income attributable to any corporation, without regard to the increase of 2% as in subsec. (a), in subpar. (C). Former subsec. (b), which limited the 2% increase in subsec. (a) in cases where the affiliated group included one or more Western Hemisphere trade corporations or one or more regulated public utilities, to the amount by which the consolidated taxable income of the affiliated group exceed the income attributable to such corporations and utilities, was struck out.

Subsec. (c). Pub. L. 88–272, §234(b)(1), struck out subsec. (c) which defined regulated public utility. See section 7701(a)(33) of this title.

Subsec. (d). Pub. L. 88–272, §234(b)(1), redesignated subsec. (d) as (b).

1960—Subsec. (d). Pub. L. 86–780 added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(25) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of

this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7201(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years ending after November 17, 1989.

''(2) BINDING CONTRACT EXCEPTION.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, stock issued after November 17, 1989, pursuant to a written binding contract in effect on November 17, 1989, and at all times thereafter before such issuance, shall be treated as issued on November 17, 1989.

''(3) SPECIAL RULE WHEN SUBSIDIARY LEAVES GROUP.—If, by reason of a transaction after November 17, 1989, a corporation ceases to be, or becomes, a member of an affiliated group, the stock of such corporation shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such cessation or commencement, unless such transaction is of a kind which would not result in the recognition of any deferred intercompany gain under the consolidated return regulations by reason of the acquisition of the entire group.

''(4) RETIRED STOCK.—

''(A) Except as provided in subparagraph (B), if stock issued before November 18, 1989, (or described in paragraph (2)), is retired or acquired after November 17, 1989, by the corporation or another member of the same affiliated group, such stock shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such retirement or acquisition.

''(B) Subparagraph (A) shall not apply to any retirement or acquisition pursuant to an obligation to reissue under a binding written contract in effect on November 17, 1989, and at all times thereafter before such retirement or acquisition.

''(5) AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of such Code, auction rate preferred stock shall be treated as issued when the contract requiring the auction became binding.

''(6) SPECIAL RULE FOR CERTAIN AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, any auction rate preferred stock shall be treated as issued before November 18, 1989, if—

''(A) a subsidiary was incorporated before July 10, 1989 for the special purpose of issuing such stock,

''(B) a rating agency was retained before July 10, 1989, and

''(C) such stock is issued before the date 30 days after the date of the enactment of this Act [Dec. 19, 1989].''

Section 7207(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any disposition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before such disposition.''

Amendment by section 7821 of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(u) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(j)(1)(A), (2), (3)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10222(a)(2) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(j)(1)(B), Nov. 10, 1988, 102 Stat. 3604, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after December 15, 1987.

''(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

''(C) TREATMENT OF CERTAIN EXCESS LOSS ACCOUNTS.—

''(i) IN GENERAL.—If—

''(I) any disposition on or before December 15, 1987, of stock resulted in an inclusion of an excess loss account (or would have so resulted if the amendments made by paragraph (1) had applied to such disposition), and

''(II) there is an unrecaptured amount with respect to such disposition,

the portion of such unrecaptured amount allocable to stock disposed of in a disposition to which the amendment made by paragraph (1) applies shall be taken into account as negative basis. To the extent permitted by the Secretary of the Treasury or his delegate, the preceding sentence shall not apply to the extent the taxpayer elects to reduce its basis in indebtedness of the corporation with respect to which there would have been an excess loss account.

''(ii) SPECIAL RULES.—For purposes of this subparagraph—

''(I) UNRECAPTURED AMOUNT.—The term 'unrecaptured amount' means the amount by which the inclusion referred to in clause (i)(I) would have been increased if the amendment made by paragraph (1) and [had] applied to the disposition.

''(II) COORDINATION WITH BINDING CONTRACT EXCEPTION.—A disposition shall be treated as occurring on or before December 15, 1987, if the amendment made by paragraph (1) does not apply to such disposition by reason of subparagraph (B).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1249(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1052(c)(5) of Pub. L. 94–455 effective with respect to taxable years beginning after Dec. 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1507(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c) of Pub. L. 94–455, set out as a note under section 1504 of this title.

Amendment by section 1901(b)(1)(Y) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 234(c) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 12, 172, 904, 1341, 1552, and 7701 of this title] shall apply with respect to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 1504. Definitions

(a) Affiliated group defined

For purposes of this subtitle—

(1) In general

The term ''affiliated group'' means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) 5 years must elapse before reconsolidation

(A) In general

If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and

(ii) such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

(B) Secretary may waive application of subparagraph (A)

The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

(4) Stock not to include certain preferred stock

For purposes of this subsection, the term ''stock'' does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

(b) Definition of "includible corporation"

As used in this chapter, the term ''includible corporation'' means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year.

[(5) Repealed. Pub. L. 94–455, title X, § 1053(d)(2), Oct. 4, 1976, 90 Stat. 1649.]

(6) Regulated investment companies and real estate investment trusts subject to tax under subchapter M of chapter 1.

(7) A DISC (as defined in section 992(a)(1)).

(8) An S corporation.

(c) Includible insurance companies

Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

(2)(A) If an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under section 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

(B) If an election under this paragraph is in effect for a taxable year—

(i) section 243(b)(3) and the exception provided under section 243(b)(2) with respect to subsections (b)(2) and (c) of this section,

(ii) section 542(b)(5), and

(iii) subsection (a)(4) and (b)(2)(D) of section 1563, and the reference to section 1563(b)(2)(D) contained in section 1563(b)(3)(C),

shall not be effective for such taxable year.

(d) Subsidiary formed to comply with foreign law

In the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subtitle as a domestic corporation.

(e) Includible tax-exempt organizations

Despite the provisions of paragraph (1) of subsection (b), two or more organizations exempt from taxation under section 501, one or more of which is described in section 501(c)(2) and the others of which derive income from such 501(c)(2) organizations, shall be considered as includible corporations for the purpose of the application of subsection (a) to such organizations alone.

(f) Special rule for certain amounts derived from a corporation previously treated as a DISC

In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

(1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under section 805(b)(2)(A) of the Tax Reform Act of 1984, and

(2) any amount treated as received under section 805(b)(3) of such Act.

(Aug. 16, 1954, ch. 736, 68A Stat. 369; Mar. 13, 1956, ch. 83, § 5(8), 70 Stat. 49; Pub. L. 85–866, title I, § 64(d)(3), Sept. 2, 1958, 72 Stat. 1657; Pub. L. 86–69, § 3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 86–376, § 2(c), Sept. 23, 1959, 73 Stat. 699; Pub. L. 86–779, § 10(j), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 89–389, § 4(b)(3), Apr. 14, 1966, 80 Stat. 116; Pub. L. 91–172, title I, § 121(a)(4), Dec. 30, 1969, 83 Stat. 537; Pub. L. 92–178, title V, § 502(e), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title VIII, § 803(b)(3), title X, §§ 1051(g), 1053(d)(2), title XV, § 1507(a), Oct. 4, 1976, 90 Stat. 1584, 1646, 1649, 1739; Pub. L. 95–600, title I, § 141(f)(4), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96–222, title I, § 101(a)(7)(L)(i)(VIII), (iv)(II), Apr. 1, 1980, 94 Stat. 199, 200; Pub. L. 98–369, div. A, title I, § 60(a), title II, § 211(b)(20), July 18, 1984, 98 Stat. 577, 756; Pub. L. 99–514, title X, § 1024(c)(15), (16), title XVIII, §§ 1804(e)(1), (10), 1899A(35), Oct. 22, 1986, 100 Stat. 2408, 2800, 2804, 2960; Pub. L. 100–647, title I, § 1018(d)(10), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 101–508, title XI, § 11814(b), Nov. 5, 1990, 104 Stat. 1388–557; Pub. L. 104–188, title I, §§ 1308(d)(2), 1702(h)(6), Aug. 20, 1996, 110 Stat. 1783, 1874.)

REFERENCES IN TEXT

Section 805(b)(2)(A) and (3) of the Tax Reform Act of 1984, referred to in subsec. (f)(1), (2), is section 805(b)(2)(A) and (3) of Pub. L. 98–369, which is set out as a note under section 991 of this title.

AMENDMENTS

1996—Subsec. (b)(8). Pub. L. 104–188, § 1308(d)(2), added par. (8).

Subsec. (c)(2)(B)(i). Pub. L. 104–188, § 1702(h)(6), inserted ''section'' before ''243(b)(2)''.

1990—Subsec. (c)(2)(B)(i). Pub. L. 101–508, § 11814(b), substituted ''section 243(b)(3)'' for ''section 243(b)(6)'' and ''243(b)(2)'' for ''section 243(b)(5)''.

1988—Subsec. (b)(7). Pub. L. 100–647, § 1018(d)(10)(A), amended par. (7) generally, striking out '', or any other corporation which has accumulated DISC income which is derived after December 31, 1984'' after ''in section 992(a)(1))''.

Subsec. (f). Pub. L. 100–647, § 1018(d)(10)(B), added subsec. (f).

1986—Subsec. (a)(4)(C). Pub. L. 99–514, § 1804(e)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''has redemption and liquidation rights which do not exceed the paid-in capital or par value represented by such stock (except for a reasonable redemption premium in excess of such paid-in capital or par value), and''.

Subsec. (b)(2). Pub. L. 99–514, § 1024(c)(15), struck out ''or 821'' after ''section 802''.

Subsec. (b)(7). Pub. L. 99–514, § 1804(e)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''A DISC or former DISC (as defined in section 992(a)).''

Subsec. (c)(2)(A). Pub. L. 99–514, § 1899A(35), struck out ''or 821'' after ''section 801''.

Pub. L. 99–514, § 1024(c)(16), substituted ''subsection (b)(2)) includes'' for ''subsection (b)(2) includes''.

1984—Subsec. (a). Pub. L. 98–369, § 60(a), in amending subsec. (a), generally, revised existing provisions of subsec. (a) into pars. (1), (2), and (4), added pars. (3) and (5), revised definition of ''affiliated group'', and expanded the enumeration of securities not included under term ''stock''.

Subsecs. (b)(2), (c)(1), (2)(A). Pub. L. 98–369, § 211(b)(20), substituted ''section 801'' for ''section 802''.

1980—Subsec. (a). Pub. L. 96–222 substituted ''a tax credit employee stock ownership plan'' for ''an ESOP'' and ''employee'' for ''leveraged employee''.

1978—Subsec. (a). Pub. L. 95–600 substituted ''(within the meaning for section 409A(*l*)) while such securities are held under an ESOP, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under a leveraged employee stock ownership plan which meets the requirements of section 4975(e)(7)'' for ''within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1975, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively''.

1976—Subsec. (a). Pub. L. 94–455, §803(b)(3), substituted ''dividends, employer securities within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1976, or qualifying employer securities within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively'' for ''dividends'' after ''preferred as to''.

Subsec. (b)(4). Pub. L. 94–455, §1051(g), substituted ''Corporations with respect to which an election under section 936 (relating to possession tax credit) is in effect for the taxable year'' for ''Corporations entitled to the benefits of section 931, by reason of receiving a large percentage of their income from sources within possessions of the United States'' in par. (4).

Subsec. (b)(5). Pub. L. 94–455, §1053(d)(2), struck out par. (5) which included corporations organized under the China Trade Act, 1922, within term ''includible corporation''.

Subsec. (c). Pub. L. 94–455, §1507(a), designated existing provisions as provision preceding par. (1) and par. (1), in provision preceding par. (1) as so designated, substituted ''Notwithstanding the provisions'' for ''Despite the provisions'', in par. (1) as so designated, substituted ''tax under section 802 shall be treated'' for ''taxation under the same section of this subtitle shall be considered'' and added par. (2).

1971—Subsec. (b)(7). Pub. L. 92–178 added par. (7).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1966—Subsec. (b)(7). Pub. L. 89–389 struck out par. (7) exception to definition of ''includible corporation'' of unincorporated business enterprises subject to tax as corporations under section 1361 of this title.

1960—Subsec. (b)(6). Pub. L. 86–779 inserted ''and real estate investment trusts'' after ''Regulated investment companies''.

1959—Subsec. (b)(2). Pub. L. 86–69 struck out reference to section 811.

Subsec. (b)(8). Pub. L. 86–376 struck out par. (8) which excepted an electing small business corporation from term ''includible corporation''.

1958—Subsec. (b)(8). Pub. L. 85–866 added par. (8).

1956—Subsec. (b)(2), Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1308(d)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by section 1702(h)(6) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, and for purposes of section 243(b)(3) of this title, references to elections under such section to include references to an election under section 243(b) of this title as in effect on Nov. 4, 1990, see section 11814(c) of Pub. L. 101–508, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1024(c)(15), (16) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

Amendment by section 1804(e)(1), (10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 60(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1804(e)(2)–(5), Oct. 22, 1986, 100 Stat. 2095, 2800, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

''(2) SPECIAL RULE FOR CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of a corporation which on June 22, 1984, is a member of an affiliated group which files a consolidated return for such corporation's taxable year which includes June 22, 1984, for purposes of determining whether such corporation continues to be a member of such group for taxable years beginning before January 1, 1988, the amendment made by subsection (a) [amending this section] shall not apply. The preceding sentence shall cease to apply as of the first day after June 22, 1984, on which such corporation does not qualify as a member of such group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]).

''(3) SPECIAL RULE NOT TO APPLY TO CERTAIN SELL-DOWNS AFTER JUNE 22, 1984.—If—

''(A) the requirements of paragraph (2) are satisfied with respect to a corporation,

''(B) more than a de minimis amount of the stock of such corporation—

''(i) is sold or exchanged (including in a redemption), or

''(ii) is issued,

after June 22, 1984 (other than in the ordinary course of business), and

''(C) the requirements of the amendment made by subsection (a) are not satisfied after such sale, exchange, or issuance,

then the amendment made by subsection (a) [amending this section] shall apply for purposes of determining whether such corporation continues to be a member of the group. The preceding sentence shall not apply to any transaction if such transaction does not reduce the percentage of the fair market value of the stock of the corporation referred to in the preceding sentence held by members of the group determined without regard to this paragraph.

''(4) EXCEPTION FOR CERTAIN SELL-DOWNS.—Subsection (b)(2) (and not subsection (b)(3)) will apply to a corporation if such corporation issues or sells stock after June 22, 1984, pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984, but only if the requirements of the amendment made by subsection (a) [amending this section] (substituting 'more than 50 percent' for 'at least 80 percent' in paragraph (2)(B) of section 1504(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) are

satisfied immediately after such issuance or sale and at all times thereafter until the first day of the first taxable year beginning after December 31, 1987. For purposes of the preceding sentence, if there is a letter of intent between a corporation and a securities underwriter entered into on or before June 22, 1984, and the subsequent issuance or sale is effected pursuant to a registration statement filed with the Securities and Exchange Commission, such stock shall be treated as issued or sold pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984.

''(5) NATIVE CORPORATIONS.—

''(A) In the case of a Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or a corporation all of whose stock is owned directly by such a corporation, during any taxable year (beginning after the effective date of these amendments and before 1992), or any part thereof, in which the Native Corporation is subject to the provisions of section 7(h)(1) of such Act (43 U.S.C. 1606(h)(1))—

''(i) the amendment made by subsection (a) [amending this section] shall not apply, and

''(ii) the requirements for affiliation under section 1504(a) of the Internal Revenue Code of 1986 before the amendment made by subsection (a) shall be applied solely according to the provisions expressly contained therein, without regard to escrow arrangements, redemption rights, or similar provisions.

''(B) Except as provided in subparagraph (C), during the period described in subparagraph (A), no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law shall apply to deny the benefit or use of losses incurred or credits earned by a corporation described in subparagraph (A) to the affiliated group of which the Native Corporation is the common parent.

''(C) Losses incurred or credits earned by a corporation described in subparagraph (A) shall be subject to the general consolidated return regulations, including the provisions relating to separate return limitation years, and to sections 382 and 383 of the Internal Revenue Code of 1986.

''(D) Losses incurred and credits earned by a corporation which is affiliated with a corporation described in subparagraph (A) shall be treated as having been incurred or earned in a separate return limitation year, unless the corporation incurring the losses or earning the credits satisfies the affiliation requirements of section 1504(a) without application of subparagraph (A).

''(6) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of an affiliated group which—

''(A) has as its common parent a Minnesota corporation incorporated on April 23, 1940, and

''(B) has a member which is a New York corporation incorporated on November 13, 1969,

for purposes of determining whether such New York corporation continues to be a member of such group, paragraph (2) shall be applied by substituting for 'January 1, 1988,' the earlier of January 1, 1994, or the date on which the voting power of the preferred stock in such New York corporation terminates.

''(7) ELECTION TO HAVE AMENDMENTS APPLY FOR YEARS BEGINNING AFTER 1983.—If the common parent of any group makes an election under this paragraph, notwithstanding any other provision of this subsection, the amendments made by subsection (a) [amending this section] shall apply to such group for taxable years beginning after December 31, 1983. Any such election, once made, shall be irrevocable.

''(8) TREATMENT OF CERTAIN AFFILIATED GROUPS.—If—

''(A) a corporation (hereinafter in this paragraph referred to as the 'parent') was incorporated in 1968 and filed consolidated returns as the parent of an affiliated group for each of its taxable years ending after 1969 and before 1985,

''(B) another corporation (hereinafter in this paragraph referred to as the 'subsidiary') became a member of the parent's affiliated group in 1978 by reason of a recapitalization pursuant to which the parent increased its voting interest in the subsidiary from not less than 56 percent to not less than 85 percent, and

''(C) such subsidiary is engaged (or was on September 27, 1985, engaged) in manufacturing and distributing a broad line of business systems and related supplies for binding, laminating, shredding, graphics, and providing secure identification,

then, for purposes of determining whether such subsidiary corporation is a member of the parent's affiliated group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (as amended by subsection (a)), paragraph (2)(B) of such section 1504(a) shall be applied by substituting '55 percent' for '80 percent'.

''(9) TREATMENT OF CERTAIN CORPORATIONS AFFILIATED DURING 1971.— In the case of a group of corporations which filed a consolidated Federal income tax return for the taxable year beginning during 1971 and which—

''(A) included as a common parent on December 31, 1971, a Delaware corporation incorporated on August 26, 1969, and

''(B) included as a member thereof a Delaware corporation incorporated on November 8, 1971,

for taxable years beginning after December 31, 1970, and ending before January 1, 1988, the requirements for affiliation for each member of such group under section 1504(a) of the Internal Revenue Code of 1954 [now 1986] (before the amendment made by subsection (a) [amending this section]) shall be limited solely to the provisions expressly contained therein and by reference to stock issued under State law as common or preferred stock. During the period described in the preceding sentence, no provision of the Internal Revenue Code of 1986 (including sections 269 and 482) or principle of law, except the general consolidated return regulations (including the provisions relating to separate return limitation years) and sections 382 and 383 of such Code, shall apply to deny the benefit or use of losses incurred or credits earned by members of such group.''

Amendment by section 211(b)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as a Effective Date note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 94–455 applicable for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1051(g) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Section 1053(e) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a) and (b) [amending section 941 and 943 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsections (c) and (d) [amending this section and sections 116, 6072, and 6091 of this title and repealing sections 941–943 of this title] shall apply with respect to taxable years beginning after December 31, 1977.''

Section 1507(c)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 821, 843, and 1503 of this title] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 4(b) of Pub. L. 89–389 provided that the amendment made by that section is effective on Jan. 1, 1969.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Section 2(d) of Pub. L. 86–376 provided that: ''The amendment made by subsection (a) [amending section 1371 of this title] shall apply to taxable years beginning after December 31, 1959. The amendments made by subsections (b) and (c) [amending this section and section 1374 of this title] shall take effect on the day after the date of the enactment of this Act [Sept. 23, 1959].''

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1958, see section 64(e) of Pub. L. 85–866, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note set out under section 316 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS

Section 5021 of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7815(b), Dec. 19, 1989, 103 Stat. 2414, provided that:

''(a) GENERAL RULE.—Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986) [section 60(b)(5) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note above]—

''(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended, or

''(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

''(b) EXCEPTION FOR EXISTING CONTRACTS.—

''(1) IN GENERAL.—Subsection (a) shall not apply to any loss (or credit) of any corporation if—

''(A) such corporation was in existence on April 26, 1988, and

''(B) such loss (or credit) is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988.

''(2) $40,000,000 LIMITATION.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5) of the 1986 Code) to which paragraph (1) applies with respect to any corporation shall not exceed $40,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

''(3) SPECIAL RULE FOR CORPORATIONS UNDER TITLE 11.—In the case of a corporation which on April 26, 1988, was under the jurisdiction of a Federal district court under title 11 of the United States Code—

''(A) paragraph (1)(B) shall be applied by substituting the date 1 year after the date of the enactment of this Act [Nov. 10, 1988] for 'July 26, 1988',

''(B) paragraph (1) shall not apply to any loss or credit which arises on or after the date 1 year after the date of the enactment of this Act, and

''(C) paragraph (2) shall be applied by substituting '$99,000,000' for '$40,000,000'.

''(c) SPECIAL ADMINISTRATIVE RULES.—

''(1) NOTICE TO NATIVE CORPORATIONS OF PROPOSED TAX ADJUSTMENTS.—Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

''(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

''(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member.

Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

''(2) RIGHTS OF NATIVE CORPORATION.—

''(A) IN GENERAL.—If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

''(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

''(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

''(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation[s] is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

''(3) JUDICIAL PROCEEDINGS.—In the case of any proceeding in a Federal court or the United States Tax

Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

''(4) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

''(d) DISQUALIFIED INCOME DEFINED.—For purposes of subsection (a), the term 'disqualified income' means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

''(e) BASIS DETERMINATION.—For purposes of determining basis for Federal tax purposes, no provision in any law enacted after the date of the enactment of this Act [Nov. 10, 1988] shall affect the date on which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSACTION RULES

Section 1507(c)(2) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) LIMITATIONS ON CARRYOVERS OR CARRYBACKS FOR GROUPS ELECTING UNDER SECTION 1504(c)(2).—If an affiliated group elects to file a consolidated return pursuant to section 1501(c)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] a carryover of a loss or credit from a taxable year ending before January 1, 1981, and losses or credits which may be carried back to taxable years ending before such date, shall be taken into account as if this section had not been enacted.

''(B) NONTERMINATION OF AFFILIATED GROUP.—The mere election to file a consolidated return pursuant to such section 1504(c)(2) shall not cause the termination of an affiliated group filing consolidated returns.''

§ 1505. Cross references

(1) For suspension of running of statute of limitations when notice in respect of a deficiency is mailed to one corporation, see section 6503(a)(1).

(2) For allocation of income and deductions of related trades or businesses, see section 482.

(Aug. 16, 1954, ch. 736, 68A Stat. 370.)

Subchapter B—Related Rules

Part		Sec.[1]
I.	In general	1551
II.	Certain controlled corporations	1561

PART I—IN GENERAL

Sec.
1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.
1552. Earnings and profits.

AMENDMENTS

1978—Pub. L. 95–600, title III, § 301(b)(18)(C), Nov. 6, 1978, 92 Stat. 2823, in item 1551 substituted ''the benefits of the graduated corporate rates'' for ''surtax exemption''.

1964—Pub. L. 88–272, title II, § 235(c)(4), Feb. 26, 1964, 78 Stat. 127, inserted table of parts, and heading for part I.

[1] Section numbers editorially supplied.

§ 1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit

(a) In general

If—

(1) any corporation transfers, on or after January 1, 1951, and on or before June 12, 1963, all or part of its property (other than money) to a transferee corporation,

(2) any corporation transfers, directly or indirectly, after June 12, 1963, all or part of its property (other than money) to a transferee corporation, or

(3) five or fewer individuals who are in control of a corporation transfer, directly or indirectly, after June 12, 1963, property (other than money) to a transferee corporation,

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary may (except as may be otherwise determined under subsection (c)) disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section, or the accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such benefits or credit was not a major purpose of such transfer.

(b) Control

For purposes of subsection (a), the term ''control'' means—

(1) With respect to a transferee corporation described in subsection (a)(1) or (2), the ownership by the transferor corporation, its shareholders, or both, of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock; or

(2) With respect to each corporation described in subsection (a)(3), the ownership by the five or fewer individuals described in such subsection of stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such individual only to the extent such stock ownership is identical with respect to each such corporation.